

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

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Honorable James P. Johnson
Select Committee on Intelligence
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Johnson:

This is a response to your question as to whether, in my opinion, the War Powers Act would ~~prohibit~~ covert paramilitary operations. The question was raised during my testimony before the House Select Committee on Intelligence on August 4, 1975, and was confirmed in writing by the Committee staff on August 19. Thank you for the opportunity to submit a statement for the record.

As you are well aware, the Act, which became effective on November 7, 1973, over Presidential veto, ~~requires~~ ^{does not prohibit military operations,} Presidential consultation with Congress before the commitment of U. S. Armed Forces into hostilities and Presidential reporting to Congress following such a commitment, 50 U.S.C. § 1591 et. seq. ^{it merely} Specifically, the Act provides that:

... [t]he President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where immiment involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations. [emphasis added]

If the President, without a declaration of war or other prior congressional authorization, takes significant action committing U.S. Armed Forces into hostilities abroad or places substantially increased U.S. combat forces on foreign territory, the Act further requires that he report to Congress within 48 hours. Thereafter, the President must terminate the use of United States Armed Forces if Congress so orders or if Congress fails to act within 120 days.

^{Moreover,}
In my opinion, the Act's reporting procedures clearly do not apply to paramilitary activities or other covert action. The Act had its genesis in the



aftermath of the Cambodian incursion of 1970 and its purpose is to curb unauthorized Presidential war-making. The Act literally refers to "Armed Forces," and this term was taken in congressional debate to mean conventional military units and uniformed personnel. Moreover, an amendment which would have broadened the Act to cover paramilitary activities of the type undertaken by the CIA in Laos was offered by Senator Eagleton and was soundly rejected by a vote of 53 to 34, Amendment 366 to S. 440. Under that amendment, the War Powers Act would have covered

... [a]ny personnel employed by, under contract to, or under the direction of any department or agency of the U.S. government either

- (a) actively engaged in hostilities in any foreign country;
or
- (b) advising any regular or irregular military forces
engaged in hostilities in any foreign country.

~~Even if the War Powers Act were amended to cover paramilitary activities, it is far from clear whether such legislation could withstand judicial scrutiny. As you know, several authorities suggest that the President has an inherent constitutional power to commit United States forces, official or otherwise, into foreign hostilities, at least in certain circumstances. This view, in turn, is supported by case law and congressional acquiescence in a long history of Presidential exercise of his war-making powers without express congressional approval. Recognizing the potential for constitutional problems with the Act, Congress specifically provided in the Act that nothing in it~~

~~... is intended to alter the constitutional authority ... of the President, or the provisions of existing treaties~~

I hope that I have answered your question. I am sure you realize that my comments merely reflect my personal opinion and are not definitive with respect to either the position of the President or any other agency of the Federal Government. ~~If indeed covert paramilitary operations were undertaken abroad, I am sure that such activities would be reported to the Congress under established procedures.~~

Sincerely,

W. E. Colby
Director

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Remarks: Attached is a draft response to a question posed by Congressman Johnson during the DCI's testimony before the HSC. Please coordinate as soon as possible. <div style="border: 1px solid black; height: 60px; width: 150px; margin: 10px auto;"></div>			
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